IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2007

CORAM

THE HONOURABLE MR. JUSTICE S. RAJESWARAN

W.P. No.4319 and 4872 of 1999

Krishnan Chandrasekaran ... Petitioner
(W.P.No.4319/1999)

1 T.chandrasekaran
2 Geetha Navaneethakrishnan
3 Sangeetha Gopikrishnan ... Petitioners
(W.P.No.4872/1999)

Vs

1 District Collector,
Tiruvallur.

2 Special Tahsildar (Land Acquisition),
Adi Dravidar Welfare,
Tiruvallur. ... Respondents
(in both W.Ps.)

Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari calling for the records relating to Na.Ka.J1/31403/98 dated 4.12.98 published in Tiruvallur Government Gazette Special issue No.17 dated 17.12.1998 on the file of the first respondent and notice issued by second respondent in Na.Ka.No.734/98A1 dt.15.2.1999 and in Rc.No.734/98 A1 dated 12.3.99 respectively and quash the same.

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For Petitioners
(in both W.Ps.) : Mr.B.S.Jothiraman

For Respondents : Mr.C.Ramesh, A.G.P.
for R-1 & R-2.

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COMMON ORDER

As the issue involved is one and the same in both the writ petitions, common order is being passed.

2 For the sake of convenience, I am referring the facts pertaining to W.P. No.4319 of 1999.

3 W.P. No.4319/99 was filed by one Krishnan Chandrasekaran stating that his father purchased the lands sought to be acquired by the respondents in the year 1977 by two sale deeds dated 24.5.1977 and 21.07.1977. It is his case that the property was purchased out of funds raised by disposal of their ancestral properties. After purchase of the lands, it was divided amongst his father, his mother, his two sisters and his two brothers along with the petitioners. According to the petitioner, his father met with an accident on 19.06.1997 and the lands could not be cultivated for one year because of the accident. Now the same is being cultivated and for the purpose of cultivation they spent a sum of Rs.30,000/-.

4 When the petitioner returned from Tuticorin after seeing his wife who was in the advanced stage of pregnancy, he was informed by his father that he received a notice from the second respondent informing that the above said lands are proposed to be acquired and he sent a reply informing the respondents that the lands belonged to all the members of the family. On verification, it came to light that a notification was issued for acquiring the lands under the Tamil Nadu Act 31 of 1978. Hence, the above petition has been filed by the petitioner challenging the order passed by the first respondent dated 4.12.98 published in Government Gazette dt.17.12.98 along with the notice dated 15.02.99 issued by the second respondent.

5 A Counter affidavit has been filed by the second respondent on behalf of the respondents which was sworn by the Special Tahsildar (ADW), Tiruvallur. It was stated in the counter that to provide house-sites to 140 families of Adi-Dravidars and Arunthathiyars, lands were sought to be acquired and accordingly necessary Land acquisition proposals were initiated to acquire the lands in Ramanjeri Village. The Form I notice under Rule 3(1) and sub Section 2 of Sec. 4 of the Land acquisition Act 1978 were sent to the land owners by Regd. Post Acknowledgment Due, to appear for an enquiry. A copy of the Form I notice was also published in the public place by a beat of Tom-Tom and also by display in the concerned land. The objections raised by the land owners were examined and

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recommended for overruling. The 4(1) proposals were sent to the Collector, Tiruvallur District for approval. The Collector, first respondent herein, approved the proposal in his proceedings dated 4.12.1998 and the same was published in the District Gazette dated 17.12.98. Thereafter Form III Notice under Rule 5 (1) of the Land acquisition Act were sent to land owners by R.P.A.D. to appear for an enquiry on 9.3.1999. An award has been passed on 11.3.1999 and the entire compensation has been deposited and possession were also taken.

6 Heard the learned counsel appearing for the writ petitioners and the learned Additional Government Pleader for the respondents. I have also gone through the documents and the judgments referred to by them in support of their submissions.

7 The learned counsel appearing for the petitioners submits that when the lands are jointly owned by the entire family and this fact was informed to the respondents, it is their duty to issue independent notices to all persons who are interested in the lands. But no notice was sent to all the persons interested and therefore the entire proceedings are vitiated. The learned counsel for the petitioners further submits that the proposal sent by the second respondent was approved by the first respondent without application of mind and on that ground also the proceedings ought to be set aside. The learned counsel for the petitioners relied on the decisions of this Court reported in AIR 1989 MADRAS 222 (P.C.Thanikavelu Vs the Special Deputy Collector for Land Acquisition, Madras and another)(FB), 2001(3) M.L.J., 576 (S.R.Krishnamoorthi and others Vs The State of Tamil Nadu and another) and 2002 W.L.R. 304 (S.Guruswamy Vs The Government of Tamil Nadu rep. by Secretary to Government, Adi Dravida Tribal Welfare Department) to submit that when the enquiry officer was informed that the ownership of the land vest with persons not shown in revenue records, the enquiry officer is bound to issue notice to them and hear them too. He also relied on the decision of this Court reported in 2001 (1) M.L.J. 328 (S.K.Thirugnanasambandam and others Vs The Government of Tamil Nadu and others) to urge that the Collector has to consider the report of the Officer concerned and if there is no consideration by the Collector with reference to the report then the order is said to be bad for non application of mind.

8 Per contra, the learned Additional Government Pleader submitted that the revenue records showed the name of the petitioner alone as the land owner and a proper notice was served on him and the procedures have been strictly complied with as prescribed by the Land Acquisition Act 1978.

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9 I have considered the rival submission with regard to facts and citations.

10 From the records available, I find that the father of the writ petitioner sent a representation on 18.9.98 submitting his objections. In that representation, it was clearly stated that he has two daughters by name Geetha Navaneethakrishnan and Sangeetha Gopikrishnan and three sons by name Kumaran Chandrasekaran and Krishnan Chandrasekaran (writ petitioner) and Vikram Kiran Thangavel. He further stated that the lands measuring about 3.67 acres which were sought to be acquired have been divided among the sons, daughters, wife and himself and each of them have roughly half acre of land in equal share. He further stated that the property in survey No.705/1 and 707 is not his own and it also belongs to other family members in equal shares. The petitioner's father sent another letter to the first respondent dated 24.9.98 pursuant to the notice issued by the second respondent asking him to appear on 21.01.98 wherein he reiterated the joint ownership of the lands of the entire family members.

11 It is not in dispute that the notice was sent only to the petitioner's father and not to others even though the father of the petitioner informed the authorities about the ownership of others also.

12 In AIR 1989 MADRAS 222 (cited supra), a Full Bench of this Court held that in an enquiry under 5(A) of Land acquisition Act 1894, it is brought to the notice of the Collector that persons not named in the revenue records are also interested in the lands, then principles of natural justice enjoined upon him an obligation to issue notice to the person who is interested in the lands even though his name is not found in the revenue records. The relevant portion of the judgment reads as under:

> "6.It is not in dispute that in all cases where emergency provisions are not invoked and an enquiry under Section 5-A of the Act is contemplated, the Collector causes individual notices to be served on every person known or believed to be interested in the land to be acquired. Normally, such notices are sent to persons whose names are found recorded in the revenue records as persons interested. But in several cases it may transpire that persons whose names are found recorded in the revenue records as interested persons may cease to have such

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interest by reason of transfers of the holding or otherwise. Nevertheless, no mutation of names in the revenue records in favour of persons who have become interested in the land might have been effected. The result is that the Collector may cause individual notices to be served only on those persons whose names are found in the revenue records, but who have ceased to be interested in the land. The result is not far difficult to see. Such persons who have ceased to be interested in the land may not respond to the notice nor would they care to participate in the enquiry to be held under Section 5-A of the Act. In such cases, the statutory enquiry under Section 5-A of the Act which has not been dispensed with, would be completed without affording a reasonable opportunity to the persons who have an existing right in the land under acquisition. Though it is incumbent upon the Revenue to keep their records up to date by effecting mutation of names reflecting the actual state of affairs by showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made up to date and the persons who is really interested in the land may not receive any notice from the Collector for the enquiry under Section 5(a) of the Act. In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the names of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals for a public purpose sanctioned under the theory of 'eminent domain'. But

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the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy, the rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence of such fair play and reasonableness. The decision reported in Padmavathi Vs state of Tamil Nadu (1978)91 Mad LW 80 does not reflect the true statement of law. The Supreme Court has held in Swadeshi Cotton Mills Vs Union of India, AIR 1981 SC 818 that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under Section 5(a) of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

13 In 2001(3) M.L.J. 576 (cited supra), the learned Judge of this Court after following the Full Bench Judgment in A.I.R. 1989 Madras 222 (cited supra), held as follows:

"7.In view of certain admitted facts, there is no need to elaborate the facts. Admittedly, the petitioners' sister and one brother appeared during the enquiry under Sec.5-A of the said Act and gave the names of the persons who are interested in the land sought to be acquired. When that be the case, as held by the Full Bench of this Court in P.C.Thanikavelu Vs Special Deputy Collector, L.A. Madras, (1989)1 M.L.J. 222 A.I.R. 1989

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Madras 222, the Land Acquisition Officer is bound to serve the notice on the interested persons. To extract the principles laid down by the Full Bench is as follows:

> "it is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under Sec.5-A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that the individual notice is mandatory only to those persons whose names are found in the revenue records or who are found, by the Collector as persons interested on information received through reliable source."

8.On the above principles, there cannot be any second opinion that the Land Acquisition Officer is obliged to serve the notices on the persons interested in the land, even though such particulars are brought to his notice during the enquiry under Sec.5-A of the said Act."

14 In 2002 W.L.R. 304 (cited supra) the learned Judge of this Court came to a similar conclusion after following the above said Full Bench decision of this Court in A.I.R. 1989 Madras 222 (cited supra), i.e., persons whose names are not entered in the revenue records but about whom the officers conducting enquiry were informed of the interest they possessed, in that case, individual notices ought to be sent to each member of the family by the officers.

15 From the above decision, it is very clear that even though a person who is interested in the land and whose name is not entered in the revenue records, still a notice must be sent to him if it is brought to the knowledge of the enquiry officer about his interest in the land.

16 Admittedly, the father of the petitioner informed the first respondent about the interest of the other persons in the lands and it is also not in dispute that no notice was sent to other persons. Therefore, the entire proceedings are vitiated for want of proper notice to the persons interested in the lands, having regard to the fact that Tamil Nadu Act 31 of 1978 is ex

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propriety in nature and having regard to the vigour of its provisions, an opportunity to show cause why the lands should not be acquired should be given to all persons interested in the lands.

17 In 2001(1) M.L.J. 328 (cited supra), the learned Judge of this Court held that Collector should consider the report of the authorised officer and only then pass orders by applying his mind. The relevant portion reads as under:

> "16. So, from the above said decision if the authorities concerned did not apply their mind to the issue on which the order is passed, such order cannot be sustained. In the present cases as contemplated under Sec.4 (3) (b) of the Act, the Collector has to consider the report of the officer authorised and then he has to pass order as he may deem fit. But there is no such consideration by the Collector with reference to the report in the impugned order itself, and it cannot be said that the same has been discussed by the clerk at the Collectorate office in the note file and that is enough. The consideration must be stated by the Collector himself in the order.
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> 17. Further, only on the basis of the reasons mentioned in the order, the conclusion can be justified especially when such orders are subject to judicial review. This view of mine is supported by the recent decision of the Apex Court in The Consumer Action Group and another Vs state of Tamil Nadu, J.T. (2000)9 S.C. 272, in which the Apex Court has held as follows:
>
> > "29.Whenever any statute confers any power on any statutory authority including a delegatee under a valid statute, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power. The question whether the power has been exercised validly by the delegate, in the present

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case, if yes, then it can only be for the furtherance of that policy. What is that policy ? The policy is the development and use of rural and urban land including construction of colonies, buildings, etc., in accordance with the policy of the planning as laid down under the Act and the Rules. When such a wide power is given to any statutory authority including a delegatee then it is obligatory on the part of such authority to clearly record its reasons in the order itself for exercising such power. Application of mind of such authority at that point of time could only be revealed when order records its reason. Even if Section is silent about recording of reason, it is obligatory on the Government while passing orders under Sec.113 to record the reason. The scheme of the Act reveals, the Government is conferred with wide ranging power, including power to appoint all important statutory authorities; appoints Director and its members of Town and Country Planning under Sec.4; constitutes Tamil Nadu Town and Country Planning Board under Sec.5; Board to perform such functions as Government assigns under Section 6; appoints Madras Metropolitan Development Authority under Sec.9-A; Government entrusted for making master plan or any other new plan; any plan of modification is subject to the approval of Government. In fact, every Statutory Committee is created by the Government and its planning is subject to the approval by the Government. It is because of this that very wide power is given to it under Section 113. In a given case, where a new development in rural or urban area may be required urgently and provisions under the Act and Rules would take long procedure, it may in exercise of its exemption power exempt some of the provisions of the Act and Rules to achieve the development activity faster or in a given case if

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> any hardship arises by following or having not followed the procedures as prescribed, the power of exemption could be exercised, but each of these cases would be for furtherance of the development of that area."
>
> 18.From the abovesaid decision also, it is very clear that the Collector has not considered the report of the authorised officer while passing the order in question. Had the Collector carefully considered the report, he would have applied his mind regarding the valid objections raised by the petitioners. The petitioners have specifically stated that lands of the Government are available, and, in the lands sought to be acquired, there are coconut trees. Though the Collector has taken a decision to acquire the lands in question for the purpose of implementing the scheme, the Statute cast upon the Collector the duty of considering the report of the authorised officer, if he has authorised somebody to do his duty, as contemplated under Sec.4(3)(b) of the Act. Such consideration should be effective for the purpose for which it has been provided for. Under the Act, it is the duty of the Collector to call upon the owner or other persons to show cause as to why their lands should not be acquired and pass orders by himself on the cause so shown. An alternative also is provided to depute that function to the authorised officer. When he deputes his function, the Collector should be more careful while taking decision, and, by applying his mind, should pass orders with valid reasons. He cannot simply approve the report of the officer authorised by him."

18 In the present case, even though the father of the petitioner made number of contentions in his representation by stating that there is a Well in the land which is under active cultivation and there are non arable lands nearby which could be used for the purpose of acquisition, the same were not considered by the second respondent nor it was clearly established before this Court that there was a proper consideration and application of mind by the Collector before approving the proposal of the second respondent. Therefore, impugned proceedings are liable to be set aside on the ground of non application of mind also.

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19 W.P. No.4872/99 filed by the father of the writ petitioner in W.P. No.4319/99 along with his two daughters, challenging the very same land acquisition proceedings on identical averments and grounds of challenge.

20 In view of the decision taken by me in W.P. No.4319/99, the land acquisition proceedings are vitiated, this W.P. No.4872/99 also is to be allowed for the very same reasons given by me for allowing the W.P. No.4319/99.

21.In the result, both the writ petitions are allowed. No costs.

vaan/sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1 The District Collector,
Tiruvallur.

2 The Special Tahsildar,
Adi Dravidar Welfare,
Tiruvallur.

+ 1 cc to Mr. B. S. Jhothiraman, Advocate SR No. 36149

order,
W.P. No.4319 and 4872 of 1999.

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